

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 11-00604 LEK
)	
Plaintiff,)	
)	
vs.)	
)	
JOSEPH W. SULLIVAN,)	
)	
Defendant.)	
)	

**ORDER TO SHOW CAUSE AND GRANTING PREJUDICE DEFENDANT'S
APPLICATION TO PROCEED IN FORMA PAUPERIS BY A PRISONER**

On April 18, 2012, pro se Defendant Joseph W. Sullivan ("Sullivan") filed a Petition under 28 U.S.C. § 2241 for a Writ of Habeas Corpus ("Petition") in Sullivan v. Hendershot, Civil No. 12-00204 LEK-BMK ("CV 12-00204"). The CV 12-00204 Petition raised two grounds, one of which alleges that, in United States v. Sullivan, Criminal No. 10-00680 LEK ("CR 10-00680"), the district court erred by imposing a two-level sentencing adjustment for obstruction of justice based on conduct for which Sullivan was convicted in the instant case ("CR 11-00604" and "the Obstruction of Justice Ground"). This Court has construed the Obstruction of Justice Ground as properly raised as a motion to vacate, set aside, or correct a sentence by a person in federal custody under 28 U.S.C. § 2255. [CV 12-00204, dkt. no. 6.] On November 13, 2012, Sullivan filed his Amended Petition under 28 U.S.C. § 2241 for a Writ of Habeas Corpus ("Amended Petition"), omitting the Obstruction of Justice Ground. [CV 12-

00204, dkt. no. 9.]

On October 16, 2012, Sullivan also filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 Motion"). The § 2255 Motion raised challenges to Sullivan's sentences imposed in CR 10-00680 and in CR 11-00604. The Motion was dual filed in both cases.

[CR 10-00680, dkt. no. 68; CR 11-00604, dkt. no. 30.] The grounds asserted in the § 2255 Motion were different from the grounds asserted in the CV 12-00204 Petition. Sullivan, however, later withdrew the § 2255 Motion and confirmed that he only wanted to pursue the grounds he originally raised in the CV 12-00204 Petition. [CR 10-00680, dkt. no. 72; CR 11-00604, dkt. no. 34.] On November 26, 2012, in CR 10-00680 and in the instant case, Sullivan filed an Amended Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("Amended § 2255 Motion"). [CR 10-00680, dkt. no. 74; CR 11-00604, dkt. no. 36.] The Amended § 2255 Motion only asserts the Obstruction of Justice Ground that Sullivan originally raised in the CV 12-00204 Petition.

I. Order to Show Cause

The Court has reviewed the Amended § 2255 Motion in the instant case, and this Court cannot conclude that it appears plainly from the face of the Amended § 2255 Motion that Sullivan is not entitled to relief. Further, it appears that the Amended

§ 2255 Motion is in compliance with the rules governing the form of § 2255 motions. This Court therefore ORDERS, pursuant to Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts ("§ 2255 Rules"), that Plaintiff the United States of America ("the Government") file an answer to the Amended § 2255 Motion on or before **January 4, 2013**. The Government is ORDERED to attach all relevant transcript portions or briefs that are not available in the records of this district court to the answer as required by Rule 5 of the § 2255 Rules. Sullivan may file a reply to the answer by no later than **February 4, 2013**.

The Court DIRECTS the Clerk's Office to serve a copy of this order, along with a copy of the Amended § 2255 Motion, on the Office of the United States Attorney for the District of Hawai`i.

II. Application to Proceed in Forma Pauperis

Also on October 16, 2012, Sullivan filed an Application to Proceed in Forma Pauperis by a Prisoner ("Application"). [CR 11-00604, dkt. no. 31.] This Court denied Sullivan's Application without prejudice. [Id., dkt. no. 32.] On November 21, 2012, Sullivan filed an amended Application to Proceed in Forma Pauperis by a Prisoner ("Amended Application"). [Id., dkt. no. 35.] Sullivan's Amended Application shows that he qualifies as a pauper within the meaning of 28 U.S.C. § 1915.

This Court therefore GRANTS the Amended Application.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, December 4, 2012.



/S/ Leslie E. Kobayashi

Leslie E. Kobayashi

United States District Judge

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